

indermal Vs. State of M.P. and ors.

indermal Vs. State of M.P. and ors.

SooperKanoon Citation : sooperkanoon.com/504742

Court : Madhya Pradesh

Decided On : Apr-02-1998

Reported in : II(1999)DMC467

Judge : N.K. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306 and 498A; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 216

Appeal No. : Criminal Revision No. 177 of 1993

Appellant : indermal

Respondent : State of M.P. and ors.

Advocate for Def. : G. Desai, Adv. for Respondent No. 1 and ;Bhagwansingh, Adv. for Respondent Nos. 2 to 6

Advocate for Pet/Ap. : K.P. Panday, Adv.

Disposition : Revision allowed

Judgement :

N.K. Jain, J.

1. This revision by the complainant is directed against the order dated 12.7.1993 passed by the IIInd Addl. Sessions Judge, Mandsaur, dismissing application made

by the prosecution for framing additional charge under Section 498A, Indian Penal Code against the accused-respondent Nos. 2 to 6.

2. Applicant Indermal is the father of late Smt. Indubala who was married to respondent No. 5-Surendra. Respondent No. 2-Ranjit Singh and No. 4-Sampatbai are the parents of respondent No. 5-Surendra. Respondent No. 3-Virendra is the brother of Surendra while No. 6-Indubala is wife of Virendra. Deceased Indubala died of burn injuries on 7.1.1992. On a report lodged by the applicant Indermal, Police Mandsaur registered a crime under Sections 306 and 498A, Indian Penal Code and after usual investigation filed charge-sheet against the accused persons. The Trial Court below, however, framed charge only under Section 306, Indian Penal Code against the accused-respondents and declined prayer of the prosecution for framing additional charge under Section 498A, Indian Penal Code by its order impugned, thus giving rise to this revision.

3. I have heard Mr. K.P. Pandey, learned Counsel for applicant, Mr. G. Desai, learned G.A- for respondent No. 1-State and Mr. Bhagwansingh, learned Counsel for accused-respondent Nos. 2 to 6.

4. Section 498A which provides for punishment for committing cruelty by husband or relatives of husband of a woman reads as follows :

'498-A. Husband or relative of husband of a woman subjecting her to cruelty-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purposes of this section 'cruelty' means-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to

meet such demand.'

5. From the Clause (a) of Section 498A it will appear that the basic difference that lies between Sections 498A and 306 is that under Section 498A cruelty is committed by the husband or his relatives is of such nature as is likely to drive the woman to commit suicide. Commission of suicide is not necessary for substituting the offence under Section 498A. However, whether suicide is committed as a direct consequences of such cruelty then Section 306, Indian Penal Code is attracted. So, in a case where cruelty by husband or his relatives is the direct cause for commission of suicide by the woman then ingredients of offence under Section 498A are also made out in addition to that of Section 306, Indian Penal Code. It is pertinent to note here that the learned A.S.J. in the charge under Section 306, Indian Penal Code framed by him against the accused persons, has clearly stated that the accused have abated commission of suicide by subjecting the deceased to cruelty in order to compel her to meet their demand for dowry. In a way the learned A.S.J. himself was satisfied as to the existence of all the ingredients which constitute offence under Section 498A, Indian Penal Code. The prayer of the prosecution for framing charge under that section was, therefore, wholly justified and the Court below clearly erred in rejecting that prayer.

6. It is true that initially when the charge under Section 306, Indian Penal Code was framed by the Court, prosecution did not make any grievance about non-framing of charge under Section 498A, Indian Penal Code. No revision or other proceeding against the order of framing of charge was filed before this Court. But this did not and could not prevent the prosecution from making application for addition of charge and the Court below had jurisdiction under Section 216, Criminal Procedure Code to frame an additional charge if justified by the evidence on record. In the instant case, as already pointed out, the evidentiary material placed on record did prima facie make out a case under Section 498A in addition to Section 306, Indian Penal Code.

7. In the result I allow this revision, set aside the order impugned and direct that the Court shall frame additional charge under Section 498A, Indian Penal Code against the accused-respondent Nos. 2 to 6. The Court shall then proceed to try

the accused persons keeping in view the directions contained under Section 217, Criminal Procedure Code.

8. Record of the Trial Court alongwith a copy of this order be transmitted to that Court immediately.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com